queathed a fund in trust for a married woman with a provision that during the lifetime of her husband she should receive only the interest. The trustee, the *cestui*, and the property were in Texas. By the law of Texas such restraint is enforceable; by the law of Illinois it is not. While her husband was still alive the *cestui* sued to get the corpus of the trust fund. *Held*, that the *cestui* cannot recover, since the administration of the trust is governed by the law of Texas. *Lanius* v. *Fletcher*, 101 S. W. 1076 (Tex., Sup. Ct.).

Questions of the administration of testamentary trusts of personalty are properly governed by the law of the place of administration. *Parkhurst* v. *Roy*, 7 Ont. App. 614; see 20 HARV. L. REV. 382, 393. The decision in the present case, however, was based, not on this sound ground, but on the theory that the law of Texas governed because it was the evident intention of the testator that it should govern. This is clearly a misconception. It is true that the testator's intention as to what law should govern may be of importance. Thus, in interpreting the meaning of a bequest, if the testator had in mind the law of another state, it will be construed by that law. *Harrison* v. *Nixon*, 9 Pet. (U. S.) 483, 504. Again, in cases where the place of administration is doubtful, the intention is important because it helps to determine that place, which would ordinarily be the domicile of the testator. *Cross* v. *U. S. Trust Co.*, 131 N. Y. 330; *Rosenbaum* v. *Garrett*, 57 N. J. Eq. 186. But to say that a trust, created and administered in the same state, could by the mere desire of the testator be governed by the laws of some foreign state, is to reduce the proposition relied on by the court to an absurdity.

CONSPIRACY — CRIMINAL LIABILITY — DAMAGE TO PERSON IN HIS TRADE OR CALLING. — In accordance with an agreement of theatre managers to exclude the complainant, a dramatic critic, from their play-houses, he was refused admission to certain performances. The sole motive of the theatre managers was to protect themselves from public articles reflecting on their personal integrity and on their religious faith. *Held*, that the agreement is not criminal under the Penal Code of New York. *People* v. *Flynn*, 189 N. Y. 180.

For a discussion of this case in the lower court, see 20 HARV. L. REV. 68.

CONSTITUTIONAL LAW — NATURE AND DEVELOPMENT OF CONSTITUTIONAL GOVERNMENT — STATE QUASI-SOVEREIGNTY. — The State of Georgia as quasi-sovereign sought to enjoin a Tennessee corporation from discharging noxious gases across the state line. It did not appear that an action at law would be an inadequate remedy, if it were an issue between private parties. *Held*, that if the defendant failed to abate the nuisance, an injunction should be granted. *Georgia* v. *Tennessee Copper Co.*, 206 U. S. 230. See NOTES, p. 132.

CONSTITUTIONAL LAW — POWERS OF CONGRESS — EXCLUSIVE FEDERAL CONTROL OVER NATIONAL BANKS. — § 5198 of the U. S. Compiled Statutes 1901 provides that, though a national bank knowingly charges a usurious rate of interest, the instrument shall not be void. N. Y. Laws 1837, c. 430, § 1, provides that all instruments charging a usurious rate shall be void; but N. Y. Laws 1892, c. 689, § 55, makes state banks subject to the same usury laws as national banks. A note was made by the defendant at a usurious rate to a payee not a bank. It was later bought at a legal rate by the plaintiff, a state bank. *Held*, that since Congress exercised its power of passing exclusive laws governing the effect of usury on national banks, as to such banks, and consequently as to state banks, the general usury law is superseded, and hence the note is enforceable. *Schlesinger* v. *Gilhooly*, 189 N. Y. 1. See NOTES, p. 136.

CONSTITUTIONAL LAW — POWERS OF THE JUDICIARY — INTERSTATE COMMON LAW. — Kansas filed a bill in the United States Supreme Court to restrain Colorado from using the waters of the Arkansas River for irrigation purposes. On the question as to what rule of decision should apply, Kansas contended that the common law rule of riparian ownership should control; Colorado, that on principles of international law controversies between states

should be justiciable only if justifying reprisal between independent nations. *Held*, that broad principles of state equality should control, and that the body of decisions on interstate controversies constitute interstate common law. *Kansas* v. *Colorado*, 206 U. S. 46. See NOTES, p. 132.

CONSTITUTIONAL LAW — SEPARATION OF POWERS — JUDICIAL RECOUNT AND RE-CANVASS OF BALLOTS. — A statute provided that upon petition by any candidate for a certain office the Supreme Court must summarily canvass the ballots cast. *Held*, that the statute imposes judicial duties on the courts and is therefore valid. *Metz* v. *Maddox*, 105 N. Y. Supp. 702 (App. Div.). See NOTES, p. 138.

CONSTITUTIONAL LAW — WHO CAN SET UP UNCONSTITUTIONALITY — ESTOPPEL THROUGH LAPSE OF TIME. — The plaintiff sought to assail an act of the legislature, passed thirteen years before, dividing the state into senatorial districts. *Held*, that it is too late to question the validity of the act. *Adams* v. *Bosworth*, 102 S. W. 861 (Ky.). See NOTES, p. 133.

CRIMINAL LAW — SENTENCE — FEDERAL COURTS' RIGHT TO IMPRISON TO ENFORCE FINE. — The defendant was convicted under a federal statute ordering punishment by a fine, but providing no penalty of imprisonment. *Held*, that the court has common law jurisdiction to decree that the defendant shall stand committed to jail until the fine be paid, or he be otherwise discharged according to law. *Ex parte Barclay*, 153 Fed. 669 (Circ. Ct., Dist. Me.).

A sentence which does not conform to the punishment provided by statute is void. *In re Pridgeon*, 57 Fed. 200. But at common law, a sentence of fine may provide that the defendant stand committed till his fine be paid. *Harris* v. *Commonwealth*, 23 Pick. (Mass.) 280. The theory allowing such imprisonment is that the fine alone is the penalty, whereas the imprisonment enforces its collection. *Ex parte Bryant*, 24 Fla. 278. The commitment being on this basis, the sentence in the principal case would not be void in a common-law court as exceeding the statute. But whether federal courts have common-law powers in this respect admits of doubt. The courts of the United States, as a general rule, have no common-law jurisdiction in criminal cases. *U. S.* v. *Lewis*, 36 Fed. 449. But they are authorized to adopt common-law procedure when the jurisdiction and powers given by United States laws do not provide adequate remedies. U. S. COMP. STAT. 1901, § 722. Such inadequacy did not exist in the principal case, since federal statutes provide for the collection of fines by execution against the defendant's property, as in civil cases. U. S. COMP. STAT. 1901, § 1041. The decree of imprisonment seems therefore unjustified as an exercise of common-law powers. A previous decision, however, supports such a sentence, although the court gave no reasons for its conclusion. *Ex parte Jackson*, 96 U. S. 727, 737.

DECEIT — NEGLIGENCE AS SUBSTITUTE FOR INTENTIONAL UNTRUTH — LIABILITY OF NATIONAL BANK DIRECTORS. — The defendant, a director of a national bank, participated in the report of the financial condition of the bank required by statute. The report was in fact false, and the plaintiff acted thereon and suffered damage. *Held*, that the defendant is liable only if he published the report with knowledge of its falsity. *Yates* v. *Jones Nat'l Bank*, 206 U. S. 158.

Apart from statute it would seem that liability would attach if there was no honest belief in the truth of the report. See *Derry* v. *Peek*, 14 App. Cas. 337. The National Bank Act requires the publication of a verified report, and provides that every director who knowingly participates in the violation of any provision of the act shall be liable. 3 U. S. COMP. STAT. 1901, §§ 5211, 5239. And the present case holds that this statute excludes common law liability for any violation of the duties expressly imposed thereby, and that *scienter* must be shown to maintain an action. The case is in conflict with several prior decisions. It has been held that a director is an insurer of the truth of his